

CHASE ENERGY, INC.

IBLA 88-194

Decided February 9, 1990

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, affirming Farmington Resource Area Manager's decision to impose civil penalties for incidents of noncompliance with Departmental oil and gas leasing regulations but modifying civil penalty amount. NM 14-20-0603-742.

Reversed.

1. Administrative Authority: Generally--Appeals: Jurisdiction--Board of Land Appeals--Mineral Leasing Act: Civil Penalties--Oil and Gas Leases: Civil Assessments and Penalties--Public Lands: Administration--Regulations: G

Assessments to compel compliance with regulations implementing the Mineral Leasing Act constitutes an exercise of the Department's regulatory power and is not stayed by the filing of a bankruptcy petition by an oil and gas lessee.

2. Administrative Procedure: Administrative Record--Administrative Procedure: Administrative Review--Administrative Procedure: Decisions--Oil and Gas Leases: Civil Assessments and Penalties--Oil and Gas Leases: Incidents of Noncompliance

ments required by an assessment of a Resource Area Manager, evidence must appear in the record to support the finding of noncompliance. Where the record is unclear as to what documents were required or whether documents filed were inadequate, the record is insufficient to support assessment of a civil penalty for noncompliance with the order.

APPEARANCES: B.J. Baggett, Esq., Farmington, New Mexico, for appellant; Margaret C. Miller, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Chase Energy, Inc. (Chase), has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated November 19, 1987, affirming a decision of the Farmington Resource Area Manager to impose civil penalties for incidents of noncompliance with Departmental oil and gas leasing regulations, but modifying the amount of civil penalty.

Chase purchased lease 14-20-0603-742 from Overland Oil and Gas on January 1, 1985. Navajo Tribal No. 1 well was then present on the lease with rods, pump, and tubing in the well. It appears the well was drilled and completed sometime in 1978. In a sundry notice given on Form 3160-5 filed with the Farmington Resource Area on March 8, 1985, Chase requested approval to test the well and produce from it. In support of the application, the notice reviewed the well's history, reported the current condition of the well and the fact it was completed 7 years earlier, and requested approval to store and measure production off-lease. The application was "accepted for record" on May 18, 1987.

By letter dated May 27, 1987, BLM ordered Chase to file a well completion report in six copies on "Form 3160-4" ^{1/} for well No. 1, and to make a "request for off lease storage." The May 27 letter stated that "[f]ailure to submit the above within 30 days of receipt of this letter may result in an assessment for noncompliance pursuant to 43 CFR 3163.1."

On July 20, 1987, BLM assessed Chase \$250 for failure to comply with a written order, pursuant to 43 CFR 3163.1(2). BLM also ordered that Chase "come into full compliance with the written order of May 27, 1987."

On October 9, 1987, pursuant to 43 CFR 3163.1, BLM assessed

\$50 per day starting August 31, 1987 and continuing until the violation is complied with. If the violation is not complied with by October 10, 1987, this penalty will be replaced with a penalty of * * * \$500 per day starting from October 11, 1987,

^{1/} 43 CFR Part 3160 note (1988) lists operating forms used for Federal and Indian lease management. Form 3160-4 is described as: "Well Completion of [sic] Recompletion Report and Log--Due 30 days after well completed." 43 CFR Part 3160 n.1 (1988). Form 3160-5 is defined as: "Sundry Notice and Reports on Wells--Subsequent report due 30 days after operations completed." *Id.* The regulations at Part 3160 provide, pertinently:

"Standard forms for providing basic data are listed in NOTE 1 at the beginning of this title. As noted on Form 3160-4, two copies of all electric and other logs run on the well must be submitted to the authorized officer. Upon request, the operator shall transmit to the authorized officer copies of such other records maintained in compliance with paragraph (a) of this section."

43 CFR 3162.4-1(b) (1988).

retroactive to August 31, 1987, and continuing until the violation is complied with or until October 31, 1987.

On October 24, 1987, Chase filed a well completion report on Form 3160-4, and sought review by the State Director of BLM. Chase argued that the order of May 27, 1987, was not clear, that Chase had attempted to comply timely, and that compliance should be considered to have been timely made for that reason.

In the decision here on appeal, the Deputy State Director affirmed the Area Manager's decision, but modified the civil penalty assessment, explaining that:

The Area Manager, in a letter of May 27, 1987, instructed Chase to submit six copies of a delinquent Well Completion Report (Form 3160-4) and a request for off lease storage and measurement of production from the No. 1 Navajo Tribal well, within 30 days of receipt. The well is on lease 14-20-0603-742.

Chase failed to submit either the report or the request within the required 30 days. The Area Manager, in a letter dated July 20, 1987, assessed Chase \$250, provided a second 30-day period in which to submit the delinquent report and the request for off lease storage and measurement and gave notice that failure to comply timely would result in Chase being liable for civil penalties.

Chase has submitted the required Well Completion Report but, as of the date of this decision, the Area Manager has not received the request for off lease storage and measurement. Therefore, Chase is not in full compliance with the requirements of the letter from the Area Manager of May 27, 1987.

We conclude, therefore:

1. The Area Manager was correct in requiring Chase to submit the Well Completion Report and request for off lease storage and measurement within 30 days.
2. The Area Manager was correct in assessing Chase \$250 for failure to comply with the letter of May 27, 1987.
3. The Area Manager was correct in assessing civil penalties for failure to comply timely within the second 30-day period.
4. The total assessment for which Chase would be liable under the Area Manager's schedule is \$30,000 (\$500 per day for 60 days).

5. It is appropriate in this instance to modify the civil penalty schedule. [2/] The schedule is hereby modified to \$50 per day for 60 days for the following reasons:

a. Chase appears to have been confused as to what specifically was required to be submitted.

b. Chase apparently made a good faith effort to submit to the Area Manager most of what is required.

Chase is, therefore, ordered to pay \$3000 in civil penalties. Chase is also ordered to submit the request for off lease storage and measurement to the Area Manager within 15 days of receipt of this decision.

On December 1, 1987, within the time allotted by the Deputy State Director, Chase again filed a written request for off-lease storage with BLM, and also filed this appeal. In its statement of reasons for appeal (SOR), Chase argues that it substantially complied with the May 27, 1987, order by filing the sundry notice of March 8, 1985, which contained all the information ultimately required by the May 27 order, albeit not on Form 3160-4 as specified by that order.

The order of May 27, 1987, stated pertinently that "we have not received a Completion Report for the reentry [of well No. 1]. We also have not received your request for off lease storage/measurement of the production for this well." These findings were not correct, however, since Chase had earlier filed a Form 3160-5 stamped "received Mar. 8, 1985 Bureau of Land Management, Farmington Resource Area" and "accepted for record May 18, 1987, Farmington Resource Area." This document recites the history of well No. 1, reports the current condition of the well, and requests approval to move production off-lease. In fact, as Chase contends, substantially all the information later accepted by BLM in satisfaction of the May 27 order is supplied on the March 8, 1985, sundry notice. Form 3160-4 is required to be filed "30 days after well completed." 43 CFR Part 3160 note 1 (1988). This event, so far as is known, occurred sometime in 1978.

Although he found, incorrectly, that there had been no request to store production off-lease, the Deputy State Director concluded that Chase was "confused" and had "made a good faith effort to submit * * * what is required" (Decision at 2). This conflicting conclusion concerning Chase's reporting is explained by reference to the case file, which reveals that one of the documents, the request to store production off-lease, asked for

2/ Use of the term "civil penalty" is incorrect, because regulation 43 CFR 3163.1 (1988) was relied upon by BLM throughout these proceedings for the action taken. Under Departmental regulations, BLM makes "assessments" pursuant to provisions of the Mineral Leasing Act. "Civil penalties" are imposed under the Federal Oil and Gas Royalty Management Act of 1982. See generally 43 CFR Subpart 3165 (1988).

on May 27, had been submitted on March 3, 1985, and "accepted" on May 18, 1987.

Subsequently, Chase submitted a well completion report on October 24, 1987, on Form 3160-4, and an application to store production off-lease on December 3, 1987, which included a map showing the route for the proposed removal of production from the lease. This report was accompanied by a request for review from Chase's attorney received by BLM on October 27, 1987, which explained:

When I called the BLM office on Friday, October 23, 1987, I requested information on what Chase was required to file on Form 3160-4 and told this was what was needed. I have filled out a new Form 3160-4 which contains the information I copied from the Form 3160-4 presently on file with BLM since 1978 adding the estimated footage of tubing and rods and giving the make and model of the pump-jack. I have also filled in the Date of First Production which was taken from the reports filed with BLM, being 3160-6. This report was timely filed according to our records.

On appeal to this Board Chase has repeated this explanation, arguing that it had substantially complied with all reporting requirements imposed by BLM although this task was complicated by inaccurate reports filed by a prior owner of the well. As to the request for off-lease storage, Chase reiterates "that the Sundry Notice of March, 1985, does indeed address the matters of off-lease storage and testing" (SOR at 3).

[1] Counsel for BLM has informed the Board that appellant has filed a bankruptcy petition that may affect adjudication of this appeal. This Board has also been provided with an order entered by the U.S. Bankruptcy Court for the District of New Mexico dated May 26, 1989, which provides that "the automatic stay shall be lifted to enable the BLM to issue a Notice of Incidents of Noncompliance" (for reasons relating to actions for environmental protection) (Order Lifting Stay dated May 26, 1989, at 1). This order does not appear to be relevant to this appeal, although on October 31, 1988, counsel for BLM suggested that this appeal should be stayed until November 8, 1988, to permit the bankruptcy judge to issue an order which might affect this appeal. While the SOR states "the company will probably seek protection * * * in Chapter 11 proceedings" Chase has not raised bankruptcy as a defense to the civil penalty proceeding or suggested that there is reason to further delay adjudication of this appeal.

If this administrative proceeding constitutes a continuation of a proceeding by a Governmental unit to enforce its regulatory power, this appeal is not stayed by the filing of a bankruptcy petition by Chase. See 11 U.S.C. § 362(b)(4) (1982). It appears, and Chase does not argue otherwise, that the enforcement action BLM undertook here, assessment of a civil penalty to compel compliance with regulations implementing the Mineral Leasing Act, constituted an exercise of the Department's regulatory power. Cherry Hill Development v. Office of Surface Mining Reclamation and Enforcement, 108 IBLA 92 (1989), and see S. Rep. No. 989, 95th Cong.,

2d Sess. 52, reprinted in 1978 U.S. Code Cong. & Admin. News 5787, 5838; Penn Terra Ltd. v. Department of Environmental Resources, 733 F.2d 267, 274 n.7 (3rd Cir. 1984). This appeal is an extension of that regulatory proceeding and is therefore unaffected by the automatic stay. Id.

[2] To sustain an administrative determination there must be a sufficient record to support the decision. California Wilderness Coalition, 101 IBLA 18 (1988); California Wilderness Coalition (On Reconsideration), 105 IBLA 196 (1988). In this case, to support the determination by the Deputy State Director affirming part of the penalty assessed against Chase requires that the terms of the May 27 order be shown, and that there also be a showing that the order was not obeyed in some particular by Chase. The May 27 order required Chase to file two documents: a well-completion report on Form 3160-4, and a request for off-lease storage. The latter document was not required to be on any particular form. Since such a request was filed on March 8, 1985, the order was confusing, particularly because BLM had "accepted" the March 8, 1985, request on May 18, 1987, only a few days before the May 27 order issued. Inasmuch as the May 27 order did not state how the earlier-filed request for off-lease storage was inadequate, the apparently clear terms of the order were clouded by the circumstances in which the order was issued, seemingly ignoring the March 8, 1985, request for off-lease storage and measurement.

Concerning the order to file six copies of Form 3160-4, the circumstances under which the order issued are no less confusing. The record before us does not show how many copies of Form 3160-5 were furnished by Chase on March 8, 1985, but the May 27, 1987, order clearly required use of a different form: Form 3160-4 which is required to report well completion, although it appears this form was filed in 1978 by Chase's predecessor. Nonetheless, information supplied by Chase on Form 3160-5 was ultimately used to complete a Form 3160-4 which was accepted as satisfactory by the Deputy State Director.

Although the Deputy State Director does not explain exactly what circumstances moved him to reduce the civil penalty to \$3,000 from \$30,000, he determined that Chase was justifiedly "confused" by the order. That finding was not limited to the request for off-lease storage, but relates to both documents required to be filed, and recognizes that the reporting requirement imposed upon Chase was, under the circumstances, not clear.

Moreover, the Deputy State Director's finding that Chase was confused about what was required to be reported is not consistent with his prior finding that the Area Manager was correct in assessing civil penalties for failure to comply with the May 27 order. If the order was confusing, as the Deputy State Director finds it was, then compliance was not possible until the order was clarified. See Wallace S. Bingham, 21 IBLA 266, 82 I.D. 377 (1975) (holding that noncompliance with a regulation which is unclear cannot provide justification for imposition of a penalty, and that such a rule requires that any doubt concerning the matter be resolved in favor of the applicant). Until Chase was afforded an opportunity to comply with an intelligible order, there could, therefore, be no penalty

assessment because there was no violation upon which an assessment could be founded.

In sum, on the record before us we are unable to affirm BLM, because the finding by the Deputy State Director that the Area Director properly assessed a penalty against Chase for failure to comply with the order of May 27, 1987, is in conflict with the finding that Chase was confused by the meaning and requirements of the order, a finding which is supported by the record before us. Further, the finding that Chase had not submitted a request for off-lease storage is not supported by the record, which contains such a request filed prior to May 27, 1987. Finally, we find the terms of the May 27, 1987, order, under the circumstances at the time of issuance, were so unclear as to require clarification before the order could be enforced.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the New Mexico State Office is reversed.

Franklin D. Arness

Administrative Judge

I concur:

John H. Kelly
Administrative Judge

